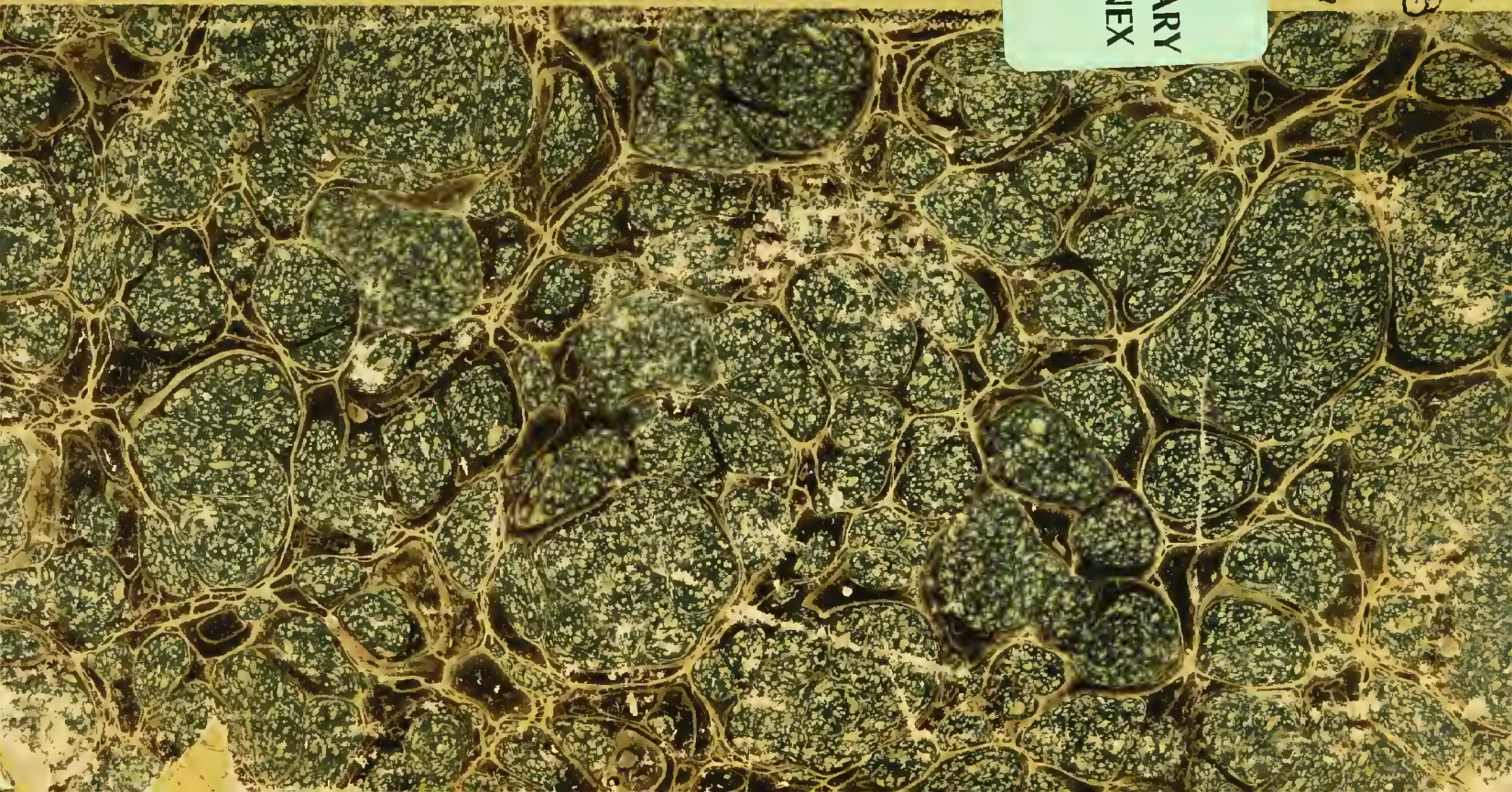

SEPARATION OF PANAMA FROM COLOMBIA

REPLY

TO

CERTAIN STATEMENTS CONTAINED IN THE WORK ENTITLED "HISTORY OF THE PANAMA CANAL," BY I. E. BENNET, WASHINGTON, D. C., 1915.

WASHINGTON
PRESS OF GIBSON BROS.
1916

[From Official Colombian Documents]

REPLY TO CERTAIN STATEMENTS CONTAINED IN THE WORK ENTITLED "HISTORY OF THE PANAMA CANAL," BY I. E. BENNET, WASHINGTON, D. C., 1915.

CONCHA MISSION TO THE UNITED STATES, 1902.

On pages 110 and 111 a summary of the course of the negotiations is given which is wholly incomplete and hence inaccurate. The same is true of the documents published on pages 494 and 495 where only the documents with which the negotiations were opened are inserted, omission being made of the documents exchanged during the continuance of these negotiations.

The pamphlet published in Bogotá in 1904 under the title "*The Diplomatic Negotiations of the Panama Canal*" contains all the facts and documents relating to this matter, but unfortunately little attention has been paid to this account, and consequently, not only within the country but without it as well, hardly a day passes without misrepresentations being made on the leading issues of the case.

When the Senate of the United States was discussing in 1903 the Hay-Herrán Treaty, the ex-Minister of Colombia in Washington, Señor Concha, called the attention of Dr. L. C. Rico, Minister of Foreign Affairs, to the importance to Colombia in the subject under discussion the fact that, inasmuch as the United States had accepted by note of the Department of State of April 21, 1902, the conditions of the Memorandum of the Colombian Legation of the 18th of the same month and had furthermore promised to sign the respective Convention by note of July 18th of the same year, such a large number of changes had been proposed by the Secretary of State as to virtually substitute the original project for a totally different one. In the note addressed under date of July 11 by the Legation to the

Minister of Foreign Affairs of Colombia (pages 45 to 47 of the pamphlet) is an enumeration of the changes demanded by Secretary Hay, sixteen in number, some of which, as the note stated, *substantially affected* the original draft.

Bennet's book passes over every step in the negotiations from the April memorandum up to the withdrawal of the Colombian Legation in November until the events are given a different aspect from what they really had. The first statement is to the effect that the attitude of Minister Concha was from the start unfriendly; this is contradicted by the memorandum presented and the notes referring to him. Then the book goes on to say that the Minister offered seven modifications to the proposed treaty, without explaining that these modifications referred to the draft prepared by the Department of State and not to the original draft agreed upon between the parties, and that these modifications accordingly only tended to the maintenance of the April agreement.

The statement of the book to which reference is now being made to the effect that the declaration of the Colombian Minister on the permission to be granted to the Canal Company to transfer its rights to the United States was "a frank intimation that Colombia was endeavoring to demand an *indemnity* as the price of its consent to transfer" loses all force in the light of the explanation given to the Department of State in the Memorandum presented by the Legation under date of November 22, 1902, setting forth the reasons which rendered that special agreement essential (pages 300 to 302 of the Blue Paper).

Neither this memorandum nor the note of the same date were even acknowledged by the State Department, and the fate which befell them is given in the note of the Chargé d'Affaires, Señor Herrán, to the Department of Foreign Affairs of January 22, 1903 (page 336 of the Blue Paper), as follows:

"On November 18, 1902, the *Secretary of State handed the Legation a draft of a treaty*, as final, but as it was explicitly not

termed an *ultimatum* on the 22d of the same month Dr. Concha drafted a reply rejecting many of the stipulations contained in the proposed treaty.

"With this reply, receipt of which was never even acknowledged by the State Department, negotiations were suspended if not broken off.

"In the interim Dr. Concha left the Legation (December 1st) and by virtue of orders communicated telegraphically by Your Excellency under date of November 25th and received by me on the 28th, I endeavored to renew the interrupted negotiations.

"I was informed by the Secretary of State that the draft of the treaty presented on November 18th embodied the discussions and conversations that had been carried on for the last year and a half, that it *contained every concession* which the United States Government could make to Colombia, that it had the character of an *ultimatum* and that for this reason he had refrained from continuing the discussion invited by Dr. Concha in his reply of the 22d of November."

The statement therefore appearing in the second paragraph on page 111 of Bennet's book to the effect that Minister Concha suddenly broke off the negotiations on November 29, 1902, and left Washington without taking leave of the Department of State or explaining the reasons for his departure, is wholly inaccurate.

The party who replies logically to propositions made to him cannot be said to break off negotiations. The party guilty of this breach is the one who does not even acknowledge receipt of the communications of the other party and gives the character of an *ultimatum*, without stating this fact or as it were *ex post facto*, to his projects which he in this way attempted to force upon the other side.

Minister Concha, after waiting a few days in vain for a reply to his note of the 22d, learnt from a reliable source that President Roosevelt had wished that his passports should be issued to

him or his removal be requested, and had even been hinted at in one of the semi-official newspapers of Washington. The only alternative left to Concha was to withdraw or to retract his note: he could not do the latter conscientiously nor did the circumstance allow him any other course than to sign the treaty imperatively dictated by the Government of the United States, a step also out of keeping with his convictions. He had then to withdraw; but as he had not his letter of withdrawal which he had formerly urgently requested, and knowing, besides, that he would not be received by the Secretary of State if he presented himself for any other purpose than to withdraw the note, and that, furthermore, the conference would only have resulted in a break for which Concha did not wish to be held liable, he advised the State Department in the accustomed manner that ill-health prevented his return to Washington and that the affairs of the Legation would be dispatched by Señor Herrán as Chargé d'Affaires *ad interim*, in accordance with the instructions of his government of the 25th of November.

SEPARATION OF PANAMA FROM COLOMBIA

REFUTATION

OF THE

MISSTATEMENTS AND ERRONEOUS CONCEPTIONS OF MR. ROOSEVELT IN HIS ARTICLE ENTITLED "THE PANAMA BLACKMAIL TREATY"

BY

JOSE MARIA GONZALEZ VALENCIA
Former Minister of Foreign Affairs

WASHINGTON
PRESS OF GIBSON BROS.
1916

SEPARATION OF PANAMA FROM COLOMBIA

Refutation of the Misstatements and Erroneous Conceptions of Mr. Roosevelt in His Article Entitled "The Panama Blackmail Treaty."

Mr. Roosevelt states that when the Herrán-Hay Treaty was submitted to the Congress of Colombia the Government of Colombia was a dictatorship; that this Congress was composed of persons who owed their election to the vice-president; that the latter exercised complete control over them and could obtain from them any action he desired; that after celebrating the treaty he caused it to be opposed in the Congress so as to blackmail the Government of the United States and the Canal Company.

These statements are false. The President had exercised during the civil war of 1899 to 1902 not the powers of a dictator, but the extraordinary powers with which the constitution invests the Chief Magistrate in such cases. Shortly after the close of the civil war an executive decree declared the public order restored. Elections were forthwith called of members of Congress, and held in strict compliance with the constitution. The war had barely come to an end when two of the Ministers of Señor Marroquín demanded that he assume the powers of a dictator. On his refusal, the reasons for which were made public at the time, they resigned from the cabinet.

A considerable part of the Congress turned out hostile to the executive while vigorous opposition developed in the Senate, led by the ex-president, Señor Caro.

The flagrant contradiction in which Mr. Roosevelt incurs is evident when, after stating that Vice-President Marroquín made Congress bow to his will, goes on to say that the latter through General Reyes had hinted that in another Congress, composed of *friends* of the Government, the ratification of the treaty might be secured.

Elsewhere in his article he affirms that the Congress was wholly submissive to the will of Marroquín and that its only action and thought was the repudiation of the treaty. This Congress enacted in that year no less than sixty-two laws, almost all important measures.

Mr. Roosevelt classes the pseudo-revolution of Panama as most reasonable and just, and in various passages of his article claims that that section of the republic was in a state of intolerable oppression, violence and misgovernment. He even ridicules the Colombian authorities, calling them overseers, tyrants and oppressors in their relations to Panama. It would be an easy matter to refute these charges by means of historical evidence; but for the sake of brevity it will suffice to recall that that Department was administered on exactly the same terms as every other. If the constitution of 1886 provided that the Department of Panama should be governed by especial legislation, this was not for the purpose of oppression but rather that adequate provision be made for its special needs and attention paid to its importance. At the request of the people of Panama the Colombian Congress annulled this constitutional provision, as a result of which this Department has enjoyed since then the same administrative autonomy as that granted to the others and has freely administered its local affairs through its assembly. To this should be added that the counsels of Senators and Repre-

sentatives of Panama were always heeded in the Colombian Congress and their steps to bring about the enactment of legislation favorable to the interests of that section always successful.

One of the most glaring misstatements indulged in by Mr. Roosevelt is that in which he says that in the constitutions of 1858 and 1861 (*sic*) Panama reserved to itself the right to secede from the Federation. On a par with this is the further misstatement that the constitution of 1886 was formulated by mere executive decree and that in it Panama was reduced to the status of a colony.

Mr. Roosevelt unquestionably relies upon the fact that none of his fellow citizens will take the trouble to examine the constitutions to which he alludes; but he overestimates their credulity when he imagines that they will credit his statement and believe that in a Federal constitution similar to that of the United States the right is granted to the different States comprising the Union to secede at will.

In refuting these absurdities it is necessary to dispel the belief quite commonly held in the United States that Panama was at first an independent state and that it became a member of the Colombian Federation of its own free will. When Panama threw off the yoke of Spain it remained a part of Greater Colombia. It later became a province of New Granada until, not through a revolutionary movement on the Isthmus, but through the act of Congress of New Granada, it acquired the status of a member of the Union. Such was its condition until after the promulgation of the constitutions of 1858 and 1863, when, together with the other portions of the republic, the federation was reorganized in 1863 under the name of the United States of Colombia. By the constitution of 1886, promulgated not by executive decree but by the national council, the nation was reconstituted in the form of a central republic, and it has already been shown how Panama, far from being a mere colony,

was given, together with the other departments, full administrative autonomy.

It is fitting to add that the secession of Panama was not the result of a revolution, strictly speaking, but of acts of another character well known to all. It is proper, too, to refute the statement that Colombia retained its sovereignty over Panama only through the action of the United States. While it is true that the cooperation of forces of the great republic to the north was of material assistance on various occasions in keeping the isthmus open to traffic, these forces never had to be used in upholding our sovereignty in Panama against a foreign government or against a secessionary movement.

At this point it is fitting to call attention to yet another gross contradiction of which Mr. Roosevelt is guilty. Had it not been for the action of the United States, he says, Colombia would long ago have lost its sovereignty over the Isthmus. Now, why, if by virtue of the treaty of 1846 the United States might have taken steps to uphold our sovereignty which he supposes threatened, should his article contain the following sentence:

> "We had never guaranteed her (Colombia) against a movement for independence on the Isthmus or against action on our part if she misbehaved."

Yet another affirmation which calls for immediate rectification is that the committee named to consider the treaty "in a report which was adopted by the Congress revealed the real purpose of its action when it stated that the rights of the company expired the following year and that Colombia would then take possession of everything belonging to the latter and hence be in a better position to negotiate with the United States."

Any one reading the above might be led to believe that he alludes to the committee named to report on the Herrán-Hay treaty; but the report of this committee contains no such

declaration nor any idea in any way related to it. Another committee reporting on a proposal of Government authorization and reasoning on the hypothesis that the extension granted to the company might be illegal, hinted that in this event it would be the part of prudence to wait until the rights of the company had been forfeited in order that Colombia might then be "in a position to contract on a clearer, more definite and more advantageous basis, legally as well as materially." But it should be borne in mind, in the first place, that this committee did not sustain the illegality of the extension of time but contented itself with hinting that it would be advisable to look into this point; secondly, that this was subsequent to the rejection of the treaty; and thirdly, that though the recommendations of a report are approved the Senate does not necessarily accept as its own the ideas contained therein, but these continue to be merely the personal opinions of the authors, and it cannot therefore be said that the body has adopted the report.

Among the restrictions or changes proposed by the committee is the following: "That Article 1 be amended to include the condition that the Canal and Panama Railroad Companies should enter into a prior agreement with the Government of Colombia establishing the conditions whereby the latter would grant the necessary consent for the said companies to transfer their rights to the United States." The only paragraph bearing on this change to be found in the report is as follows:

"The necessity of this treaty being preceded by an agreement between the Government of Colombia and the Canal and Railroad Companies is obvious; and no less obvious is the vital importance of this condition. If the said companies obtained the permission or consent of our Government to begin negotiations with that of the United States for the transfer of their concessions, this permission or consent, an unquestionable prerequisite for the closing of the said negotiations, has not

yet been obtained. The companies were duly notified of this prior to the signing of the treaty. No one can deny that to authorize this transfer without previously obtaining the agreement referred to would not only work a disadvantage but would constitute a danger to Colombia."

It should here be noted that while some few persons held that the last extension granted to the Canal Company was unconstitutional and hence the act liable to disavowal and the concession to forfeiture on the expiration of the first term, that is to say, approximately one year after the beginning of the treaty negotiations, this opinion was not held in Congress. It was believed that by virtue of the provision making it compulsory for the Canal Company to obtain the consent of the Government of Colombia prior to finally authorizing any conveyance or transfer of its rights, it was natural that in order to grant this assent an agreement between the two parties should be made; there is nothing in this which can be interpreted as blackmail.

Mr. Roosevelt holds that if the Company had any real rights in the Canal those of Colombia were obscure and insubstantial. This is a singular contradiction, for if the rights derived from the contract with Colombia were real and subsisting, in so far as the Company was concerned, how could the rights derived by Colombia from the very same contract be obscure and insubstantial? The most valuable of these rights was that of taking over the part of the Canal built by the Company and all its property on the expiration of the last extension of time (that is to say, seven years after the date on which the treaty was submitted to the approval of the Senate), provided the company had not completed the work within this period. How can this right be considered of little moment and insubstantial when the company was not in a position to fulfill its obligations?

Mr. Roosevelt declares in various passages of his article that the revolutionary sentiment was very strong in Panama. The facts of the case refute this allegation. It is everywhere acknowledged that the secession of Panama was planned by a small group of politicians and business interests and that the great mass of the people of the Isthmus were entirely foreign to it and indeed had no knowledge of any preparations. It is sufficient to call attention to the fact that even after the separation had been accomplished several of the most prominent men of Panama viewed the movement with great disfavor. Among these may be mentioned José Marcelino Hurtado, Oscar Terán, Alejandro Orillac, etc., etc.

"Colombia," says Mr. Roosevelt, "underwent several changes; some portions were separated from it and at times returned." Further on he adds: "Once Panama had separated from Colombia we had no longer any obligation toward this latter. By virtue of this fact our obligation was transferred from Colombia to Panama, as it had formerly been transferred from New Granada to Colombia."

We must rectify these statements in order to avoid that any citizens of the United States unfamiliar with the history of Colombia should be misled. Prior to the secession of Panama no portion of our territory, that is to say, what was known as New Granada and now is called Colombia, had seceded, and on the reorganization of the country under the name of the United States of Colombia there was, from the international viewpoint, a mere change of name. Mr. Roosevelt tries to create the impression that the United States by its action prevented a cruel and prolonged war, thanks to which Panama has been able to enjoy fourteen years of peace.

The inaccuracy of these conceptions is evident when it is recalled that if Colombia had had freedom of action in moving

troops to Panama in order to uphold its sovereignty on the Isthmus, not one drop of blood would have been shed, because of the total impossibility of any resistance by those who had proclaimed the independence of Panama. It should not be forgotten that if the secession had not taken place Panama would have enjoyed the same peace with which Colombia has been blessed for the past fourteen years.

Again, Mr. Roosevelt sustains that the objection on the ground of unconstitutionality early raised against the Herrán-Hay Treaty was nothing more than a pretext. To offset this statement it is enough to read the report of the Senate committee to be convinced of the force of the objection. It should be borne in mind that when the committee advised the ratification of the treaty only after certain changes had been made in it, all of which were addressed chiefly to removing the charge of unconstitutionality, it reflected the public opinion of the country, manifested in various ways. Only one voice, that of Señor don Enrique Cortez, was raised demanding the approval of the pact as signed; of the other writers in the country some demanded its amendment, and others its absolute rejection.

The ex-president of the republic, Señor Caro, one of the most distinguished men of Latin America, held the treaty to be unconstitutional and immediately proposed its rejection in a bill which, after showing in its preamble the obstacles to be surmounted in the way of a constitutional amendment before it could be ratified, contained the following provisions:

"Article 1. The foregoing convention is not approved.

"Art. 2. The above declaration by Congress does not imply the slightest discourtesy to the Government of the United States; rather does Congress through the present law solemnly ratify the sentiments of American brotherhood with which the people of Colombia are animated, and the confidence that the friendly and uninterrupted relations which happily exist between

the United States and Colombia will remain unalterable through all ages."

This bill as well as the resolution unanimously approved by the Senate immediately after the rejection of the treaty, show clearly the high spirit of justice and honor which guided the Senate in its deliberations in this matter. This resolution reads as follows:

"Whereas the treaty signed in Washington on the 21st of January of the present year between the Chargé d'Affaires of Colombia and the Secretary of State of the United States of America has been rejected; and whereas the people of Colombia desire to continue cultivating the most cordial relations with the people of the United States of America and consider the completion of the Interoceanic Canal across the Isthmus of Panama of the greatest importance for the commerce and development of the republics of America; *now therefore be it resolved by the Senate of Colombia:*

"1. That a committee of three Senators be named by the President of the Senate, after consultation as far as possible with the House of Representatives, to consider the best means to satisfy the aspirations of the people of Colombia with regard to the digging of the Canal of Panama, in harmony with the national interests and the high regard for legality which on this solemn occasion have been the standard of the Senate;

"2. That the greatest publicity possible, within as well as without the country, be given to this resolution, to the changes proposed in the said treaty by the Senate committee, and to all other documents which have served as a basis for this action."

To sum up:

I.

It is not true that the Government of Señor Marroquín was a dictatorship; rather did this Magistrate expressly declare that under no circumstances would he assume this. The Con-

gress which rejected the Herrán-Hay Treaty was freely and constitutionally elected, and far from showing itself subservient to the will of the Executive, it was, in fact, hostile.

II.

It is not true that Panama was subjected to a rule of oppression, nor was it in the condition of a colony; it was a Department similar to the others in Colombia, with full administrative autonomy. There were not, therefore, any proper reasons to justify the separation.

III.

It is not true that the constitutions of 1858 and 1863 authorized that section of the Republic to secede. These constitutions established a federal régime based in every respect on that of the United States of America. If this assertion of Mr. Roosevelt had any foundation, the States of the American Union that engaged in the war of secession would have had absolute justification for the step, and they would today be justified. Furthermore, when the separation of Panama occurred the federal régime had long since been substituted for that of a Central Republic, as provided for in the constitution of 1886 which is still in force. Nor is it true that prior to 1903 any portion of what was then known as New Granada and now is called Colombia, had seceded.

IV.

It is not true that the Senate Committee named especially to consider the Herrán-Hay Treaty hinted that inasmuch as the franchise of the company would expire the following year, and Colombia was to take over all the properties of the said company, it would hence be in a better position to negotiate favorably with the United States. This committee never questioned the legality of the extension nor did the Senate discuss this point.

V.

It is not true that the rights of Colombia in the Canal Company derived from the contracts entered into with the French Company were obscure and insubstantial. These rights were necessarily as clear as those of the company and were moreover very valuable and substantial since besides the not inconsiderable annuity to be paid to Colombia, the latter was to acquire the property of the Canal on the expiration of the franchise. It was also to get all constructed portions and all the property of the company in the event, which would undoubtedly have occurred, of the inability of the company to complete the work within the time set.

VI.

It is not true that when the movements which resulted in the separation of Panama took place the spirit of secession was strong in the people. No manifestation was ever made in this sense by the great mass of the people, and prominent and distinguished men of Panama disapproved the separation even after it had become an accomplished fact.

VII.

It is not true that the action of the Roosevelt administration prevented a long and cruel war between Colombia and Panama. It is a notorious fact that without foreign aid that section of the country would have been wholly powerless to resist and that without this aid the mere presence of our troops would have sufficed to stifle any secessionary attempt without any bloodshed.

VIII.

It is not true that the objection on the score of unconstitutionality was a mere pretext. This objection reflected the almost unanimous opinion of the Colombian people, and the sincerity with which this point was debated in Congress is evidenced in the records of the meetings.

BOGOTÁ, *April, 1915.*

APPENDIX.

The following is intended to substantiate the two following propositions contained in the refutation:

First, that Panama was not at first an independent country which voluntarily entered the federation, since on its emancipation from Spain it continued forming part of what was then known as Greater Colombia, composed of New Granada, Ecuador and Venezuela; and secondly, that prior to 1903 no portion of what was formerly called New Granada and is today known as Colombia effected its separation from the latter.

The first proposition is proved irrefutably by the following paragraph taken from the declaration of independence against Spain:

"Panama spontaneously and in accordance with the general desire of the people within its borders, hereby declares itself free and independent from the Spanish Government; and the territory of the Provinces of the Isthmus belongs to the Republic of Colombia in whose Congress Panama will be represented by deputies."

This document clearly shows that when Panama threw off the Spanish yoke its purpose in doing so was not to form an independent state but to be incorporated into Colombia, that is to say, to continue after the emancipation a portion of New Granada as it had been in the colonial epoch immediately preceding the emancipation.

With regard to the second proposition it is fitting to note that there had been at different times secessionary attempts, none of which had ever been successful.

The first of these took place in 1830 when Colonel Espinar, who had been sent to the Isthmus as Commandant, raised the flag of rebellion against the Government of Colombia and

appointed a revolutionary junta which decided to secede from the rest of the republic, on condition, however, that the Isthmus would return to Colombia if Bolivar again took charge of the Government. This secessionary attempt was given up two months later by Espinar and his followers, due to the attitude of Colonel Fábriga, who remained loyal to the central government, and to the determined disapproval of the movement by Bolivar. On the death of Bolivar, Espinar once more attempted to bring about the separation of the Isthmus, but was forthwith subdued and exiled.

In 1831 the Venezuelan, Colonel Juan E. Alzuru, who had replaced Espinar as military commandant of Panama, likewise attempted a secessionary movement, inciting the people of Panama to riot. This attempt was easily controlled by the then Colonel Tomás Herrera, sent by the central government to put an end to the anarchy on the Isthmus.

In the year of 1840 New Granada was the scene of a prolonged civil war and the people of Panama, taking advantage of this condition, made a further attempt at separation. This lasted longer than the former attempts because the Government, engaged as it was in controlling the civil war in the central provinces, could not give its immediate attention to the restoration of order on the Isthmus. But in the following year the Government, after suppressing the revolutionary movement in the central provinces, called upon the rebels of the Isthmus either to submit or to be reincorporated into the republic. The latter course was immediately accepted, for the revolutionists were powerless to resist.

It should be noted that Colonel Herrera, chief of this secessionary movement, had named Señor Guillermo Radcliffe confidential agent to the United States, but the rebels neither secured recognition of their independence on the Isthmus nor support of any kind.

In 1860, again taking advantage of the desperate civil war then waging in New Granada (now Colombia), a fresh secessionary movement was undertaken on the Isthmus. This movement was, however, weaker than the preceding and was put down as soon as the Government of New Granada was in a position to give it its attention. On this occasion, as the federal régime had already been established in the country, the submission of Panama, one of the States of the federation, was effected by means of an agreement by virtue of which Panama was declared a member of the federation which was being reorganized under the name of the United States of Colombia.

From the foregoing it will be seen that while secessionary movements had been attempted prior to 1903, the Isthmus of Panama was never definitely separated nor did it ever form a State independent of Colombia. There existed at various times what is called a state of rebellion, but neither the independence of Panama nor even its belligerency was ever acknowledged by anyone of the countries comprising the family of nations, into which the Isthmus of Panama was never for a minute admitted.

The accuracy, therefore, of the second proposition cannot be gainsaid. It is not out of place here to add that the United States did not intervene in any of the movements just outlined, neither to support the rebellion nor uphold our sovereignty on the Isthmus. Of these attempts only that of 1860 took place after the United States had by the treaty of 1846 guaranteed our sovereignty on the Isthmus, and it has been shown how Colombia was able to control this movement without having to resort to the aid of the great northern republic as she might have done by virtue of this treaty.

BOGOTÁ, *April, 1915.*

SEPARATION OF PANAMA FROM COLOMBIA

REPLY

TO

AN ARTICLE ENTITLED "THE PANAMA BLACK-MAIL TREATY," PUBLISHED IN THE FEBRUARY NUMBER OF "THE METROPOLITAN," 1915.

WASHINGTON
PRESS OF GIBSON BROS.
1916

SEPARATION OF PANAMA FROM COLOMBIA

Reply to an Article Entitled "The Panama Blackmail Treaty," published in the February number of "The Metropolitan," 1915.

"The Metropolitan," a leading magazine of New York, published in its February number an article written by ex-President Theodore Roosevelt, entitled, "The Panama Blackmail Treaty," the statements in which we propose to refute in a few lines. In doing so we will compare such statements with the exact chronology of the events in which the Colonel himself played the leading rôle; we will also contrast his rude assertions with the principles of International Law and the Constitutional Law of the United States.

The fundamental rights of a sovereign State—recognized and guaranteed by International Law—are the following:

1. The right of independence and equality.
2. The right of self-preservation.
3. The right to respect for the dignity and honor of the State.
4. The right to protect its territorial ownership.

Under the right of independence exercised in accordance with the principle of equality and reciprocity, no State can, without violating the guaranties of International Law, intervene in the acts pertaining to the internal sovereignty of another State.

Under the right of self-preservation, the State exercises supreme authority to persecute and punish, by the force of arms, any attempt to impair its internal integrity.

Under the right of exclusive jurisdiction over all the inhabitants of its territory, the State has supreme authority to subdue and punish, by force of arms, any seditious movement occurring within its territory.

Under the right of territorial ownership, the State has supreme authority to maintain, by force of arms, its territorial integrity.

On November 2, 1903, President Roosevelt ordered the Commander of the *Nashville* to "prevent the landing of any armed force with hostile intent, either Government or insurgent, either at Colon, Porto Bello or other port * * *."

This is the act which was responsible for the controversy between the United States and Colombia.

We will omit all antecedents, which are established facts, showing that the Panama Insurrection was engineered with the tacit consent of the then Administration at Washington.

The Roosevelt order referred to was sent to the *Nashville* on November 2, 1903, *i. e.*, TWENTY-FOUR HOURS BEFORE THE OUTBREAK OF THE REVOLUTION AGAINST THE GOVERNMENT OF COLOMBIA, PROCLAIMED AT PANAMA.

On this date, November 2, 1903, the Treaty between Colombia and the United States signed November 12, 1846 (when Colombia was still known as New Granada), was still in legal force and full effect.

Article 35 of the said Treaty provides in part:

> "In consequence, the United States also guarantee the rights of SOVEREIGNTY and PROPERTY which New Granada (Colombia) has and possesses over said territory (the Isthmus of Panama) * * *."

On the same date, November 2, 1903, the principle of International Law which forbids a State arbitrarily to intervene in the acts of sovereignty of another State was still in force.

On that date, November 2, 1903, the Republic of Colombia, in exercise of her fundamental rights of sovereignty, sent her military forces of the line to Panama for the purpose of crushing the rumored uprising, which, as a matter of fact, did break out on November 3, 1903.

By the afore-mentioned order of President Roosevelt, the regular naval forces of the United States STOPPED THE FORCES OF THE GOVERNMENT OF COLOMBIA FROM ACTING WITHIN ITS LEGITIMATE TERRITORIAL

JURISDICTION. Therefore, President Roosevelt intervened in the sovereign internal action of Colombia. Such act of intervention is tantamount to a declaration of war, under the provisions of International Law. And a declaration of war being a political act the exercise of which is vested exclusively in Congress and not in the President (Sec. 8, Art. 1, U. S. Constitution), the act of intervention was an arbitrary act, not based on any legal reason, and, therefore, a clear violation of the Constitution of the United States, inasmuch as one of the sections imposes the duty upon the President of seeing that the laws are *faithfully executed.* (Sec. 3, Art. 2, U. S. Constitution.)

An arbitrary act such as that performed by President Roosevelt is an unjustifiable offense, under the rules of International Law, and President Roosevelt, having acted then in his character of President of the United States of America, through that most illegal act brought upon the United States the following responsibilities:

> First.—The responsibility of giving satisfaction to Colombia for the grievous injury to her fundamental rights to respect for dignity and national honor.
>
> Second.—The responsibility to compensate Colombia for the heavy material loss she sustained through the secession of Panama and the latter's independence.

Writing on this subject, Mr. Henry Pensa held that:

> "The intervention of the United States in the interior affairs of Colombia did not consist in a moral support alone * * * but in an effective assistance * * * making it impossible for Colombia battalions to reach Panama *on the same day of the insurrection;* and also on the prohibition to Colombia afterward to land her troops on the Isthmus in order to subdue the revolutionists and recover the Province of Panama; while the laws of neutrality imposed upon the United States the duty of non-intervention in the struggle in order to help one of the adversaries, the United States by their intervention paralyzed the action of Colombia and at the same time supported the revolution. Hence it can be affirmed that

> the Republic of Panama is the work of the United States (Roosevelt) Government rather than of the insurgents, because if the United States Government had not helped effectually the endeavors of the revolution by impeding the march of the Colombian troops, the revolution would have succumbed the day after it was started and before any Nation would have consented to give its recognition to Panama as a sovereign State."

Such is the real juridical status of the question pending between Colombia and the United States, and which the present Administration considered in making the Treaty which has been submitted to Congress for its approval.

The foregoing documentary refutation clearly proves that in the article, "The Panama Blackmail Treaty," written by Mr. Roosevelt, the chronology of the events is changed and that the intentional confusion of time, documents, and of the persons which figured in the history of Colombia, especially in her relations with the United States, bring imaginary charges against the present American Administration. But all the charges made in said article are shattered when struck by the overwhelming historical truth, as has been shown.

Finally, the argument advanced by Mr. Roosevelt as conclusive for the rejection of the Treaty is its incompatibility with that entered into between the United States and Panama on November 18, 1903, whereby the United States bound themselves to maintain the sovereignty of Panama. For the purpose of showing this alleged incompatibility Mr. Roosevelt says that the United States now grants Colombia the right to use the Canal for the transportation of troops, materials of war, etc., in case of war between Colombia and other Countries, *including Panama.* This is not an argument but merely a false statement, because Mr. Roosevelt allows himself to mutilate the text of the article which contains this concession, and in which we read the following: "*The provisions of this paragraph shall not be applicable in case of war between Colombia and Panama.*" By mutilating texts and perverting the facts in this manner it is

an easy matter to reach conclusions such as those contained in the article published by Mr. Roosevelt in "The Metropolitan."

In brief, no relation of continuity can be established between the acts which occurred before November 13, 1913, which was when Mr. Roosevelt as President of the United States recognized the Republic of Panama (the recognition obtained from other Nations being subsequent to November 13, 1903), and the events which occurred after said date. Before November 13, 1903, the solemn agreement of 1846, between New Granada (now Colombia) and the United States, as well as the sovereignty of Colombia over the territory of Panama, were in full force and legally inviolable. Consequently, the acts prior to November 13, 1903, are the only ones which concern the Treaty of April 6, 1914, between Colombia and the United States, which must be so studied, taking into consideration the fundamental principles of International Law.

In conclusion, it will not be amiss, even though such be not the object of these lines, to comment on two fixed themes of Roosevelt.

1. That the entire matter was from the beginning, and has continued to be, a blackmail. If this were truth, how could Mr. Roosevelt justify himself for having sought to satisfy Colombia by offering her the Root-Cortes Treaty, wherein he recognizes her right to an indemnity? Public treaties are not made with blackmailers.

2. That the pending Treaty benefits not only Colombia but her associates in the United States and elsewhere.

Associates? Yes, Colombia does have them, and they form an enormous legion—all men in the United States who love right, who love justice, and who desire sincere harmony with Latin America; and similar associates exist in all the political parties of this great Nation.

In truth, there is no matter which, for the statesman, has greater present and future importance than the settlement of the differences with Colombia.

SEPARATION OF PANAMA FROM COLOMBIA

EXTRACTS

OF

LETTERS ADDRESSED BY JOSÉ M. GONZÁLEZ VALENCIA, FORMER MINISTER OF FOREIGN AFFAIRS OF COLOMBIA, TO A FRIEND OF COLOMBIA IN THE UNITED STATES, AS A REPLY TO THE ASSERTIONS MADE

BY MR. WILFRED H. SCHOFF IN HIS PAMPHLET ENTITLED:

"EXTENSION OF REMARKS OF HON. J. HAMPTON MOORE OF PENNSYLVANIA IN THE HOUSE OF REPRESENTATIVES, INCLUDING A HISTORICAL REVIEW BASED ON OFFICIAL RECORDS."

WASHINGTON
PRESS OF GIBSON BROS.
1916

SEPARATION OF PANAMA FROM COLOMBIA

Extracts of letters addressed by José M. González Valencia, former Minister of Foreign Affairs of Colombia, to a friend of Colombia in the United States, as a reply to the assertions made by Mr. Wilfred H. Schoff.

PANAMA HAD A LEGAL RIGHT TO SECEDE.

Mr. Schoff says:

> "The relations of the Isthmus to the Colombian union "and of the United States to the Isthmus seem to resolve "themselves into two definite propositions: First, that in "joining the Colombian union the Isthmus reserved the "right to separate therefrom, fought for that right when "it was trespassed upon, secured the acknowledgment "thereof in two constitutions of the Republic, never relin- "quished that right, and exercised it in 1903 in accordance "with the original reservation."

Evidence may be found in the act of independence of Panama from Spain that it was not the intention of the Panamanians, when they proclaimed their emancipation from Spain, to be separated from New Granada. Under the Spanish rule, at the time of the emancipation, Panama was a portion of the Viceroyalty of New Granada as shown in the acts to which reference is made in Mr. Schoff's pamphlet. It is not true that

Panama was kept in fiscal matters subject to Lima, an assertion based merely on the ground that the funds to be sent from Peru to Spain ought to pass through Panama.

COLOMBIA DID NOT FREE PANAMA FROM SPAIN. PANAMA WON ITS OWN INDEPENDENCE.

It must be observed that although the Isthmus won its independence without any direct intervention of the military forces whose action brought about emancipation of the other sections of Colombia, it is quite apparent that Panama could obtain that desideratum so easily and without bloodshed owing to the triumphs and achievements of Bolivar. Moreover, Colombia had to spend a great deal of money, and to employ military forces in order to defend the Isthmus and prevent its being regained by Spain. Attention is called to the following passage of the note from Fabrega to Bolivar, quoted in the pamphlet: "We need disciplined men with competent officers to garrison "the most important points where we might be attacked."

When Panama got emancipated from Spain it declared to do so in order to be a part of the then Republic of Colombia (the Great Colombia) composed of the former Spanish colonies named New Granada, Venezuela, and Quito. In 1830, when Venezuela and what later was called Ecuador seceded from New Granada, the Isthmus continued to be a province of the latter until 1835, when that section was granted by the Congress of New Granada the condition of Federal State. When it entered into the agreement of 1861, a part of which is quoted in the pamphlet, it only claimed the autonomy belonging to a Federal State. In the preamble of the said agreement it is stated that "the interests of the Isthmus require the recognition "of a national government and a pact of union in which the true "federal principles may be consecrated * * *."

SECESSIONS OF 1830 AND 1831.

Mr. Schoff states:

> "The first Colombian Republic, which was formed in "1819, was a federation of sovereign States, the political "formation of which was modeled after ideas borrowed from "the French Revolution. Bolivar assumed far more auto- "cratic powers than the constitution contemplated, and "dissatisfaction on the Isthmus was so great that in 1830 "an ordinance of secession was adopted under the leader- "ship of José Espinar; at about the same time other prov- "inces of Colombia separated and formed the Republics "of Venezuela and Ecuador, which have remained inde- "pendent since that time. The Isthmus, however, was "persuaded to return to the federation, but not until after "the passage of a second ordinance of secession, under Juan "Alzuro, in July, 1831."

This is quite untrue. The first Colombian Constitution, that is, the Constitution issued in 1821, is that of the Nation that in our history is named "Gran Colombia," composed of New Granada, Ecuador, and Venezuela. The Republic organized by this constitution was a unitary one and no appearance of federation is to be found therein.

It is also untrue that the supposed dissatisfaction in the Isthmus should have had as a cause the autocratic powers assumed by Bolivar, whilst, on the contrary, the Panamanians required that Bolivar should take in hand again the reins of the government, when Vice-President Caicedo was in charge of the Government.

CONDITIONAL RETURN TO COLOMBIA.

Mr. Schoff asserts:

> "This was the third ordinance of secession from Colom- "bia adopted in Panama, and in such case the political

"rights reserved on the gaining of independence in 1821 "were redeclared and reasserted. The separation lasted "this time until 1842, when General Mosquera, represent- "ing the Bogotá Government, visited Panama and suc- "ceeded in persuading the people of the Isthmus to return "to the federation on the promise that their rights would be "fully acknowledged in the new constitution."

It is to be observed that, as has already been stated, the people of Panama unproclaimed the emancipation from Spain in 1821, did not reserve for themselves any rights of sovereignty; that although the attempt of secession, that is to say, the state of rebellion lasted several months because the Government was active in crushing the revolution at the inner part of the country, the said attempt proved quite impotent as soon as the revolution was quelled; that the agreement between the Government and the rebel Isthmus was merely an act of submission of the latter to the former, and there was no possibility of returning to the federation, as the country was at that time, and had never been, under federal institutions; that if promise was made to respect the rights of the Isthmus, such rights were no other than those belonging to a province of New Granada, and therefore the maintenance of the non-federal Government in the Constitution of 1842 was not in violation of any agreement.

SEPARATE SOVEREIGNTY RECOGNIZED BY LAW.

Mr. Schoff says:

"The rights of Panama were recognized by the Bogotá "Government in 1855, when the Amendment to the "Granadine Constitution constituted it a federal sovereign "State, although all the other provinces remained under "direct control of the central government.' (Valdés, La Independencia del Istmo de Panamá.)

This act did not recognize, but *granted* the political condition of federal state to Panama, that is, to section of Colombia (then New Granada) which, up to that time, had been only a province thereof. In article 12 of the same act the Colombian Congress promised to *grant* the said condition to other provinces.

SECESSION OF 1860.

Mr. Schoff asserts:

"In 1860 several States seceded from the Granadine "Confederation, and among them was the State of Panama, "the President of which, José Obaldía, issued a proclama- "tion, June 4, 1860, in which he stated that, 'The Isthmus " 'to secure its own welfare, has no way left open except to " 'emancipate itself forever from disorganized Granadine " 'Confederation.' "

"Mosquera, President of the Confederation, once more "persuaded the Isthmians, against their best judgment, to "withhold final action. He held out the prospect that the "capital of the newly organized Republic should be located "at Panama, and his message concluded with these words:

" 'I trust that in reply to this letter you will advise me " 'that the State of Panama is still in union with the others, " 'and that you will send your Plenipotentiary to take his " 'seat in the Congress, the convocation of which I have " 'indicated to you.' " (Valdés, La Independencia del Istmo de Panamá, p. 8.)

The revolution of 1860 and the attempts at secession of three of the nine States that composed the Granadine Confederation did not cause the defunction of this entity and the creation of a new one. Those attempts failed inasmuch as the Supreme Chief of the general revolution lorded every portion of the country, a new Constitution was issued, in which the federal system was maintained and the name of the Nation was changed; that is all.

AGREEMENT OF 1861.

Mr. Schoff states:

"This, it will be observed, was a written acknowledg-"ment by the President of the Republic of the independent "sovereign rights of the State of Panama in 1860. Panama "returned to the federation in 1861, under a written "agreement entered into between its President, Santiago "de la Guardia, and Manuel Murillo Toro, commissioner of "New Granada. This agreement signed at Colon, Septem-"ber 6, 1861, contained the following specific reservations "of the sovereignty of Panama:

" 'ARTICLE 1. The sovereign State of Panama shall be " 'incorporated into the new national entity which is called " 'the United States of New Granada, and shall continue " 'in consequence to form one of the federal sovereign " 'States which compose that association * * * with " 'the specific reservations and conditions expressed in the " 'following article.

" 'ART. 2. * * * the said State to be hereby incor-" 'porated with the United States above mentioned, but " 'this State in exercise of its sovereignty reserves to itself " 'the right to refuse its approval to the said new pact, and " 'to the constitution which may be drawn up whenever, " 'in its judgment, it may violate the autonomy of the " 'States.'" (Valdés, La Independencia del Istmo de Panamá, p. 9.)

"This agreement was ratified by the legislative Assembly "of Panamá, September, 1861, with the following stipula-"tion:

" 'The President of the State is hereby authorized, in " 'order to reconstitute the Republic to incorporate the " 'said State therein: ALWAYS PROVIDED, that it " 'shall be accorded the same concessions as set forth in the " 'agreement of September 6, last.'" (Valdés, La Independencia del Istmo, p. 11.)

Attention must be called to the important circumstance that when the revolution of 1860 broke out, the Republic was

under the Federal Constitution adopted in 1858. Now, then, in the situation of anarchy created by that revolution, some of the federal States attempted to secede, but the secession was rendered impossible by the superior might of General Mosquera, who, after having triumphed as the supreme chief of the revolution, lorded the country altogether. In the said note, quoted in the pamphlet, far from recognizing to the Isthmus any independent sovereign rights, he said: "I trust that in reply to this "letter you will advise me that the State of Panama *is still in* "*union* with the others * * *." The terms of this note make it clear that he acknowledged only the status of federation existing at that time.

As to the agreement of 1861, attention must be called to Article 1, in which it is stipulated that the State of Panama *shall continue* to form one of the federal States which compose the association. That agreement was but the submission of one of the rebel States to the entity, the assertion of the legal organization of the country disturbed for a short time.

AGREEMENT VIOLATED BY COLOMBIA.

Mr. Schoff affirms:

> "The rights of nullification and secession recognized in "the constitutional amendment of 1855, constitution of "1858 and the agreement of 1861 were never relinquished "by the citizens of Panama, and the terms of this agree- "ment of 1861 were included in the Colombian constitution "of 1863, by the terms of which it was also provided that "an amendment to the constitution should be proposed by "a constitutional convention, and after ratification by the "State assemblies, reenacted by the succeeding Congress "before becoming effective; but notwithstanding this fact "a new constitution was promulgated in 1865 by executive "decree without observing the forms of amendment speci-

"fied in the constitution of 1863, and in direct violation "thereof. In this constitution of 1855 the sovereign rights "of the Isthmus were terminated without representation in "Congress." (Colombian Constitution, Art. 76, Sec. 4.)

Neither in the Congressional act of 1855 nor anywhere else was such a right recognized to the Isthmus.

It is to be observed: firstly, that our present constitution, issued, not in 1885, as stated in the pamphlet, but in 1886, was adopted by a national Council of Delegates; secondly, that according to this Constitution Panama had a right to be, and actually was, represented in Congress in the same way as the other Departments; thirdly, that the only difference established by this Constitution between the Isthmus and the other Departments was that in virtue of the provision of Article 76, Sec. 4, the administration of Panama was to be regulated by Congress; but this only difference was abrogated by an amendment issued in 1894, and from that time forward the administrative interests of the Department of Panama were regulated by its own Assembly with perfect autonomy, that is to say, Panama was set by that amendment on the same footing as the other Departments of Colombia.

The reason why this Constitution of 1863 was not amended according to the terms established therein, is this: under that Constitution, owing to the exaggerated political autonomy granted to the States that composed the Federal Union, its life was much agitated, so that a time arrived when all the Colombian parties eagerly wished for a substantial amendment, but all attempts at that purpose resulted in failure, because the unanimity required in the vote of the Senate by Article 92 of the said Constitution rendered impossible any amendment whatsoever. In 1885 a mighty revolution broke out, and as soon as it quelled, a National Assembly of Delegates issued an act containing the basis of a constitutional reform, and having

obtained the approval of a great majority of the municipalities, the said Assembly or Council of Delegates issued in 1886 the Constitutions which with the amendments adopted in 1910, are now in force.

It is worth mentioning that in 1895 and in 1900 the liberal party revolted, and on both occasions many Panamanians, members of the said party, helped the revolutionary movement spread all over the Colombian territory, but neither in those revolutions nor on any other occasion did the Isthmus protest against the adoption of the non-federal form.

To recapitulate:

Since the emancipation from Spain up to 1855, Panama was a province formerly of the Great Colombia and later of New Granada. In the said year the Isthmus was granted by the Congress of New Granada the condition of federal State, and a similar provision was subsequently adopted with regard to other provinces. This condition was recognized and maintained in the constitution of 1858, in the agreement of 1861 and in the constitution of 1863. Afterwards the Colombian Nation, that voluntarily had created the federal States, withdrew the grant and decided to return to the unitary or non-federal form adopted in the beginning of its existence, and maintained, for nearly half a century, a proceeding in which nobody can see any breach of faith, any violation of rights. Panama, far from having been reduced, by the Constitution of 1886, to the status of a crown colony, was one of the Colombian Departments having equal rights and administrative autonomy.

THE FRENCH CANAL CONCESSION OF 1878.

Mr. Schoff says:

"The construction of the Panama Canal was undertaken "by the French Company under the contract known as the

"'Salgar-Wyse' concession, dated March 20, 1878, and "under its terms the Canal Company was to be organized "within two years and the canal work to be completed "within twelve years from such organization (Report of "the Isthmian Canal Commission, 1899–1901, vol. 1, p. "473). It is well to recall that at almost the same date the "Bogotá Government, in order to reserve to itself absolute "control over the Isthmus, sent troops to Panama in viola- "tion of the constitution against the protest of the Governor "of the State, who was removed from office for having the "temerity to make such protest, although, as an elective "State officer the federal government at Bogotá had no "right or constitutional power to intervene. The Canal "Company's concession was extended by law of December "26, 1890, for 10 years upon payment to the Colombian "Government of $2,000,000 gold and 10,000 shares at $100 "par in the Company." (Report of the Isthmian Canal Commission, 1899–1901, p. 479.)

It is not true that at the time mentioned the Government of Colombia sent troops to the Isthmus violating, in consequence, the Constitution, neither for the purposes therein affirmed.

EXTENSION OF THE TIME LIMIT TO 1910.

Mr. Schoff asserts:

"The Company therefore petitioned the Colombian "Government in 1898 for a further extension in order that "its finances might be placed on a more secure footing. "Civil war existed in the Republic at that time. Congress "was not in session, and the state of siege being proclaimed, "the executive possessed under the Colombian Constitu- "tion almost unlimited powers. (Colombian Constitution, "1885, Art. 121.) At that time the Colombian President, "Dr. Manuel Antonio Sanclemente, whose term of office "began November 3, 1898, for a six years' period, granted "an extension of the Canal Company's concession to run

"until October 31, 1910, by executive decree endorsed by "the Ministers of his Cabinet, as required in such cases, by "Article 121 of the Constitution. It was this action which "finally brought about the imprisonment of President "Sanclemente and the establishment of the military dic- "tatorship under the Vice-President, José Manuel Marro- "quín."

There was no civil war in 1898 and the Congress held in that year the constitutional ordinary session. The civil war begun one year later.

The extension of the time limit mentioned therein was granted in 1900, not in 1898, and this extension has nothing, absolutely, to do with Marroquín's taking charge of the Government.

PARTISAN INTRIGUES IN COLOMBIA.

Mr. Schoff affirms:

"In this Constitution (1886) there are all the necessary ele- "ments for internal intrigue toward the replacement of the "legal officials by their substitutes, who may be, and fre- "quently are, of opposite political affiliations, and it was "the existence of these Congressional substitutes which "enabled President Marroquín to propose to President "Roosevelt that if the recognition of Panama should be "revoked, he would 'declare martial law and approve the " 'treaty by executive decree, or call an extra session of " 'Congress with new and friendly members of Congress to " 'do so,' it being an easy matter to insure enforced absence "of Senators and Representatives and the sitting of their "substitutes in their places in Congress. At this time the "two parties in Colombia were divided with reference to the "French Canal Company's rights—the leading item of their "foreign affairs. The National Party favored the reason- "able continuation of the Company's charter rights until "funds could be raised and work prosecuted in good faith

"for the completion of the Canal. The Liberal Party, "doubting the ability of the Canal Company to fulfill its "obligations, favored the cancellation of its concession on "the strict letter of the contract, the forfeiture of its rights "and properties to the Colombian Government, and the "resale thereof to another purchaser.

"This purchaser was, of course, to be the Government "of the United States, which, following the Spanish-Ameri- "can War of 1898, and hazardous voyage of the battleship "*Oregon* around South America, was resolved upon the "immediate construction of an interoceanic canal.

"The procedure favored by the Liberal Party of Colom- "bia was the same as that carried into effect by the Adminis- "tration of Nicaragua, under which the rights of the Mari- "time Canal Company, for the construction of the Nica- "ragua Canal had been declared forfeited to the Nicaraguan "Government and were now offered for sale."

It is quite untrue that, as Mr. Schoff states, the Liberal Party was against the granting of the extension of the time limit to the French Company. Doubts were expressed by individuals belonging to different parties, as to the legality and propriety of that measure, but the opinions thereabout never constituted a political platform. By the way, Marroquín was not a member of the Liberal Party, as stated by Mr. Schoff. Both Marroquín and Sanclemente were members of the Conservative Party.

INTRIGUES AGAINST SANCLEMENTE.

Mr. Schoff affirms:

"Under such conditions President Sanclemente issued his "extension of the Canal Company's concession to run until "October 3, 1910. His opponents within and without the "Administration argued that this extension by executive "decree was invalid and must be ratified by the Colombian

"Congress. President Sanclemente was then an old man "past 70 years of age, and had availed himself of Article 123 "of the Constitution by accepting temporary leave of "absence from the Capital. During this brief period the "Vice-President, Marroquín, performed the executive "duties, and the signature of Presidente Sanclemente began "to appear and continued some time thereafter, on official "documents in the form of rubber-stamp impressions, a "most irregular and illegal proceeding.

"Being dissatisfied with the conduct of public affairs, "and having recovered his health, President Sanclemente "returned to the capital, but subsequently again availing "himself of a Colombian statute in force for many years, "transferred the executive office to a country estate at "Anapoima, in the Department of Cundinamarca, at no "great distance from the capital. From this time open dis- "sension existed within his cabinet and Council of State. "Sanclemente was upheld by his Minister of State, Rafael "M. Palacio, and his Minister of War, General Manuel "Casabianca, while the remainder of the cabinet sided with "Vice-President Marroquín, who was urged to assume the "Presidency. This condition of anarchy existed until "July 31, 1900, when Vice-President Marroquín declared "himself in the exercise of the executive power, named and "installed a ministry and took possession of the govern- "ment."

President Sanclemente was not absent from the capital in virtue of a leave of absence; he continued there in full charge of the Government until July 31, 1900, and it is quite absurd to affirm that whilst Marroquín was substituting Sanclemente, in virtue of the supposed leave of absence, the signature of the letters was put on the official documents in the form of rubber-stamp impressions.

UNSUBSTANTIATED CHARGE AGAINST SANCLEMENTE.

Mr. Schoff asserts:

"The Minister of Foreign Affairs appointed by Marroquín was Doctor Carlos Martínez Silva, who had previously served as Colombian Minister in Washington. This Minister addressed Circular Letters to Foreign Governments, in which, on behalf of the Marroquín Government, he attempted to justify this seizure of President Sanclemente's person on the ground that he was incapacitated by insanity due to senile decay, and thereby an unusual occasion had arisen not contemplated by the Constitution and the laws. This assertion was not substantiated by evidence of judicial proceedings, and both the American Minister at Bogotá, Mr. Charles B. Hart, and the American Consul General, Mr. Arthur M. Beaupré, interviewed President Sanclemente while he was held captive and reported no signs of mental disability. On the contrary, he seemed in full and vigorous possession of his faculties and protested forcefully against Marroquín's treachery. Minister Carlos Martínez Silva's statement was hardly more than an excuse to lay some sort of foundation for the Marroquín Government and deceived no foreign government whose ministers were then resident at Bogotá. It was universally recognized that the reason for the violent and illegal change in administration was the determination of the Liberal Party to cancel the Sanclemente extension of time to the Canal Company, to control the Canal negotiations, and, if possible, to bring about a forfeiture of the Canal property to the Colombian Government. On the reassembling of the Colombian Congress, Marroquín submitted the Sanclemente extension as an executive order requiring confirmation and the Congress refused to confirm it. It then became the policy at Bogotá to delay final action, if possible, until October 31, 1904, when the Canal conces-

"cession would be forfeited under the terms of the previous "extension. The course of the events was, however, too "swift for this plan to be carried out."

This is quite contrary to the truth. The executive power never submitted to Congress the said extension. Nay, more, this measure never was the subject of any deliberation in either House. In a report of a Committee of the Senate, delivered by three Senators many days after the disapprobation of the Herrán-Hay Treaty, they suggested the convenience of studying the question in order to determine whether the extension should be maintained or rejected as illegal; but the Senate never took into consideration such question.

MARROQUÍN SOLICITS A CANAL TREATY.

Mr. Schoff says:

"The Marroquín Government did not send a Minister "to Washington but maintained as Chargé d'Affaires, "Dr. Tomás Herrán, Secretary of Legation. The Colom- "bian Congress was not in session, a state of siege being "proclaimed, owing to the civil war, and the negotiations "were directed personally by Marroquín at Bogotá. After "many delays a protocol was submitted by Dr. Herrán as "the basis of the Treaty, in which, under Article 1 the "Government of Colombia authorized the Canal Company "to sell and transfer to the United States its rights, privi- "leges, properties, and concessions, as well as the Panama "Railroad and all shares of that Company, the Government "reserving only its shares in the Canal Company, for which "it demanded a payment at par, and this protocol further "provided that 'the Railroad Company and the United " 'States, as owner of the enterprise, was to be free from all " 'obligations imposed by this concession'—including the "reservation of the Colombian Government on August 16, "1966—except as to the payment of the outstanding bonds,

"and the United States was granted control of the Canal "strip without affecting the sovereignty of the Republic "of Colombia over that territory, which, in Article 4, the "United States acknowledged and recognized."

It is well known that Vice-President Marroquín appointed Dr. Martínez Silva Minister in Washington, and afterwards Dr. Concha. It was only after the latter's resignation that Señor Herrán was left in charge of the Legation.

MARROQUÍN OBTAINS AND THEN REJECTS THE TREATY.

Mr. Schoff says that the Herrán-Hay Treaty was referred to the Colombian Congress as a new matter for consideration, and he adds: "The report of the Colombian Senate asserted the "invalidity of the Sanclemente extension. * * * "This is quite untrue. In the report of the Committee, to which the said treaty was referred, composed of nine Senators, nothing, absolutely nothing, is said in regard to the Sanclemente extension. The sentences quoted by Mr. Schoff belong to the above-mentioned report presented by three Senators some time after the disapprobation of the treaty. These three Senators did not propose "to delay the negotiation until the French Canal "Company's property had been forfeited," as Mr. Schoff states. They merely expressed the opinion that the matter should be studied; which the Senate did not do, for we were unwilling to adopt any course which might lead to the repudiation of the Sanclemente extension.

ISTHMIAN DECLARATION OF INDEPENDENCE.

The assertion contained in page 15 of Mr. Schoff's pamphlet, to the effect that the "citizens of Panama had obtained arms and "ammunition and *had been drilling diligently for months* * * *" is ridiculous.

Equally groundless is the other proposition, viz., that when Panama seceded, the Colombian Government was illegal and dictatorial. Whatever opinion one may have about the proceeding of Vice-President Marroquín in taking the Government and about the right which he might have had to exercise the executive power when President Sanclemente was alive, nobody can deny the right of President Marroquín to be at the head of the Government after Sanclemente's death, which occurred nearly two years before the secession of Panama. Marroquín's government was not dictatorial at all. He summoned a Congress soon after the pacification of the country, and it is noteworthy that in this Congress he met with great opposition, which proves that the Senators and Representatives were freely elected.

MR. KING'S STATEMENT.

Mr. Schoff quotes some passages of a statement of Mr. King, Minister of the United States in Bogotá when the present Constitution was issued. Attention is called to the following sentences of that statement: "Under the terms of the old Constitution (that of 1863) the States composing the Union * * * "could for any purpose and under any pretext precipitate a "revolution within the borders of their respective sovereignties "without interference of the General Government; in fact the "latter was required to concede a formal recognition to any *de* "*facto* State organization that could maintain itself by arms "upon the ruins of its predecessor."

This is true, and therefore during the period in which the Constitution of 1863 was in force the local revolutions were frequent, especially in the State of Panama. This fact was the main reason why the abrogation or the substantial reform of that constitution became a desideratum of nearly all of the Colombian statesmen. This reform, so necessary for the tranquillity and the internal order of the country, could not be performed in the way established by the Constitution of 1863, and consequently there came a revolutionary movement which resulted in the adoption of the Constitution of 1886, in which the federal form was abolished. The return to unitary or non-federal system was accepted, recognized and approved by the fact that many prominent Panamanians acted as members of the Senate and House of Representatives since the promulgation of the Constitution of 1886 up to the month of October, 1903. The only constitutional amendment requested by the Senators and Representatives from Panama was the abrogation of the provision which established, in administrative matters, a little difference between that Department and the others, and the readiness of the Colombian Congress to comply with that request is well known.

THE NEW WILLARD,

Washington, D. C., February 10, 1916.

Dear Sir:

My temporary presence in Washington, after having attended the sessions of the American Institute of International Law, as a Colombian associated member, has afforded me the opportunity to learn of certain false charges made by the press against Colombia and of other equally groundless statements regarding the Treaty signed at Bogota on April 6, 1914, between Colombia and the United States of America, and at present pending in the United States Senate. In the negotiation of this Treaty I had the honor of taking an active part as Minister for Foreign Affairs of Colombia at the time it was signed.

The earnest desire of every Colombian citizen, in the Panama question, is that the truth should be known, and that false or biased declarations against Colombia should not be made. We seek the dispassionate judgment of the American people, based on the conviction of what occurred in Panama in 1903, in order that they may thus realize that the Treaty submitted to the consideration of the United States Senate and signed by Colombia, through the initiative and action of various Administrations of the United States, can not be considered other than an act of justice and reparation.

Your attention to the accompanying documents is earnestly invited.

Very truly yours,

Francisco José Urrutia